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Growth of Obliviousness
in English towns.

1890

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The Growth of Oligarchy in English Towns

Charles W. Emerton.

THE topic with which the present paper is concerned has, for the most part, suffered neglect at the hands of writers on English constitutional history. Whereas the Germans have diligently examined the corresponding subject in the case of their own country, Englishmen have displayed strange indifference to a question which is of great significance in the growth of their civic life. Moreover the meagre treatment which this aspect of town history has received is of inferior *quality*, from a cause which is quite apparent. In Macaulay's words, our antiquaries conducted their researches in the spirit of partisans.

Brady was 'about the court,'¹ and he sought, perhaps officially, to prove in his 'Historical Treatise of Cities and Boroughs,' that the close corporation of his own time had existed at a very early period, and that it had emanated from royal grant. It may also be remarked that, through over-eagerness to establish his conclusion, Brady assumed a liberty in the treatment of his sources which would hardly be considered legitimate at the present day. On the other hand, the *quaestio vexata* of municipal reform had an important influence on the general tone of Merewether and Stephens, the most voluminous writers on municipal history. Their work contains much valuable material, but, both in the evidence selected and in the manner of proof, it is too forensic to serve as a permanent authority. They were clearly animated by a political purpose, and their thesis that municipal corporations were a late creation, and a departure from purer and more ancient democracy, was intended to justify the action of the whig party in 1835. At the best they wrote as lawyers and not as historians. They could not, or would not, see definite indications of virtual incorporation before the establishment of legal and abstract incorporation. They simply wished to furnish their political party with a strong historical showing. Their conclusions have been adopted by Gneist and other writers on English constitutional history; so that, both mediately and immediately, they are responsible for many of the erroneous

¹ Merewether and Stephens, *History of Boroughs*, Introduction, p. liv. Brady was keeper of the records at the Tower.

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notions which are entertained concerning English town government in the later middle ages. The contrast between the position of Brady and that of Merewether and Stephens is extremely sharp; sharp enough, indeed, to suggest a reasonable doubt as to the correctness of either. No attempt at elaborate confutation can be made in these notes. The utmost purpose of this article is to bring forward some reasons which tend to show that the growth of an oligarchy, in the towns of medieval England, was more regular and natural than could be inferred from the statements of those writers who have just been mentioned.

We shall first touch upon the conditions of English borough life during the early years of Norman occupation; we shall next glance at the beginnings of organic town government; in the third place we shall examine the nature of burgess-ship during the latter part of the twelfth and the early part of the thirteenth centuries; and finally we shall consider the growth of an oligarchical spirit during the period of the three Edwards. This last stage of our subject is concerned with the rise of that 'select body,' or close corporation, which was the main characteristic of borough government down to the thirty-fifth year of the present century.

I. It is not necessary to discuss in detail the nature of town administration before the Conquest. Town life under the Saxons was scarcely an important feature of national life; and the internal arrangements of the few boroughs which were then conspicuous were, in a large degree, modified before entering on the phase of development which is to occupy our attention. The writers who have discussed this aspect of later Saxon life emphasise the infrequency of a definite or rigid government. Lawmen (*lagemen*) exercised great influence in Lincoln, Stamford, and those other towns where the Danes had gained a permanent foothold.² These officers were judicial, and succession passed from father to son; but they have little or nothing in common with the *praepositi*, *ballivi*, and *majores*, who became so prominent under the Plantagenets. The *judices* of Chester were, in function, not dissimilar to the *lagemen*. We have also other proofs that class gradations and distinctions existed in the towns. In addition to the burgesses proper there were burgesses who dwelt without the walls. The better portion of the citizens at Shrewsbury formed a royal body-guard when the king visited that place. These were patricians, and so too were the mounted burgesses of Hereford and the knights of Nottingham. On the other hand we learn that *poor, mean, minor, and petty* burgesses formed part of the population at Winchester, Huntingdon, Norwich, Derby, and Tateshale in Yorkshire. Four hundred and eighty *bordars* of Norwich returned no custom, because of their

² Freeman, *Norman Conquest*, v. 466; J. F. Morgan, *England under the Norman Occupation*, pp. 157-8.

poverty; and one hundred poor burgesses of Ipswich contributed to the king's revenue only a poll tax of one penny.³ This disparity among the citizens in rank and importance naturally suggests the true origin of the borough. It brings us to the fact that the English town was not necessarily supreme in its immediate district, but was merely a section of a district where people dwelt together more compactly than elsewhere. It was not a *civitas* in the Roman sense, but rather a Saxon hundred, small and thickly settled. Hence all sorts and conditions of men, subject for the most part to feudal relations, were brought into close connexion by a gradual increase of population, on the basis of an old territorial division. As regards the payment of taxes, Domesday shows a classification of burgesses according to the several lords whose land they occupied. There were also in the towns free socage tenants. Warwick, Stafford, Romney, Buckingham, Colchester, and Norwich are among the towns within which fiefs were held from different lords. Elsewhere, as at Canterbury, the citizens themselves were prosperous, and had come to possess common property in the borough. In the latter instance they had forty-five measures without the city. Of these they took the rent and custom, the sovereign still retaining legal jurisdiction.⁴ In brief, at the Conquest inhabitants of towns acknowledged the superiority of the king, or of some mesne lord, and lived under his protection. To him they paid annual rents, and also fixed dues and customs. They might belong to different masters, or the same burgess might pay tribute to one master, and remain at the same time under the jurisdiction of another. It is unnecessary to point out the features of contrast between such a town as this, and the town of the later twelfth and of the thirteenth centuries.

II. By what means did the borough, as we thus see it in 'Domesday,' work out of the strict feudal relation into greater independence of municipal spirit and action? This question we cannot fail to ask in turning from the town of the Conquest to that of Henry II. Local influences, of course, readily suggest themselves to account for the change; but behind all these lie several general causes of transition, which are of the first importance. We are now led to consider those steps by which the English town, once a collection of fiefs belonging to different lords, came to have an organic, civic existence. The growth of the towns in trade and population during the twelfth century was marked, and its effect is visible in the extended scope of municipal relations, and in the firmer union of the burgesses themselves. This is one line of progress along which the municipality advanced. The judicial system in vogue helped to weld the townsmen together. They met for

³ Morgan, *England under the Normans*, pp. 156-7.

⁴ Ellis, *Introduction to Domesday*, i. 198-208.

common action in their folk moot or court leet, and the experience which they gained there made them conversant to a certain extent with new ideas—ideas, too, that were more liberal than those to which they had been accustomed. But most of all the burgesses were united by the bond of common payment—by the fee-farm. The *firma burgi*, the commutation of all feudal and town dues by the payment each year of a fixed sum to the king or to the mesne lord, had two main effects. It was an implicit acknowledgment that the burgesses might claim recognition as a body. In the eye of its superior the town was a unit, bound, at stated intervals, to pay him a certain amount of money. The policy of the lords was, no doubt, a strictly selfish one. They saw that by making the town as a whole, and each member of the town, responsible for the tax, the collection of their revenue would become easier and more regular. Still the boroughs gained advantages which were even more considerable. The citizens enjoyed a wider personal liberty than before, and their superiority in this respect over tenants in the neighbouring hundreds probably proved a strong incentive to the spirit of municipal pride and energy. Secondly, besides the benefits which they derived from *firma burgi*, the townsmen incurred a joint responsibility. Their union was cemented by the bond of contribution to a common fund.

A complete revolution in ideas must have taken place before the theory which held each burgess bound to his lord by individual service, was superseded by the theory which regarded the town as a whole and accepted a sum of money in lieu of all customary obligations. We need, however, note only one result, which is this: that a certain amount of machinery, hitherto uncalled for, was required as soon as this transition was brought about. In order to make the new arrangements harmonious and satisfactory, it was found that the burgesses must be represented in fiscal matters by persons in whom they placed confidence—persons of their own choice. It does not appear that the lords were unwilling to grant the privilege of free election, and from the reign of Henry II the right to choose *praepositi* and *ballivi* is granted as one of the ordinary clauses in a charter.

In thus speaking of the fee-farm we have anticipated somewhat the date at which it became generally prevalent. Hardly before the latter years of Henry II is it safe to say, that the process of 'converting individual tributes into a perpetual rent from the whole borough' had become common. The place which the burgesses henceforth occupied in the feudal system is thus defined by Hallam:

They held their lands by burgage tenure, nearly analogous to, or rather a species of, free socage. The lord, by such a grant of the town in fee-farm, divested himself of his property or lucrative dominion over the soil in return for the perpetual rent; so that the tallages subsequently

set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

To recapitulate, during the first century from the Conquest the borough underwent the following principal changes: Having grown up as a smaller and more densely inhabited hundred, comprising within its walls all the various elements of medieval society, it was—by such various means as have been indicated—largely transformed. The heterogeneous classes were knit firmly together by mutual privileges and duties; the town came to act as a unit. It is significant to mark how Stamford, Lincoln, and the Danish boroughs, where magistrates like the lawmen had been prominent, were modified by the influences which have been suggested. The lawmen disappear, and these places soon become towns of the ordinary type. Finally, these changes thrust upon the citizens a rude form of organisation. They were practically free socage tenants, who had gained the right of electing their own officers—officers who represented them in their dealings with their feudal lords, and who had general superintendence of municipal business.

The inference from all this is, that town government in its origin was called into being to fulfil naturally a new demand. There is nothing in its rise to make us doubt that it was completely spontaneous. In the process of development from the conditions of burghal life which are revealed in 'Domesday' we can discern no trace of personal or class influence. This fact should certainly be of assistance to us in our attempt to determine the character of the municipal body when we first find it enjoying a full measure of self-government.

III. Having thus seen how the municipality came into being, we are in a position to examine the nature of citizenship in the newly organised boroughs. What persons possessed a voice in the election of officers? To whom were those officers responsible for their management of local affairs? How was it possible to acquire the rights of a burgess? In a word, did the townsmen act for themselves, or were they ruled by a select body, a close corporation? The annalists of medieval England, it is true, have left us no answers to these queries. But we have royal charters and grants, the charters and grants of the mesne lords, and documents which have been printed from town archives in recent times. From these sources we shall draw most of our data, data which point clearly to a democratic type of administration. Merewether and Stephens have treated this period (1154–1272) at great length, but here, as elsewhere, they are careless in the selection of evidence.*

* Merewether and Stephens are constantly contrasting *heirs* and *successors*. They think that a grant to the burgesses and *their heirs* excludes all possibility of the existence of a corporation. Their emphasis of this point perhaps accounts for a lack of diligence, which is evident, in their search for early examples of the word *successors*.

They lay much stress on the terms of address used in the charters, and pass by many proofs which are in favour of the theory they support. We shall endeavour to eschew their method altogether, and to base our conclusions only on explicit statement. We shall first examine the 'Ancient Custom-Book of Hereford.' Johnson, in his 'Ancient Customs of the City of Hereford,' refers the origin of this work to the following circumstance: The men of Drusselane (Rhuddlan), in North Wales, presented a petition to Henry II, who, in compliance with their request, sent a royal mandate to his chief bailiff at Hereford, commanding him to search into the laws of the town and form them into a regular code, so that when required some body of precedents might be produced without delay.⁶ Accordingly a council was convened, composed of the principal citizens, and from this meeting originated the ancient custom-book, containing the laws by which the city of Hereford was governed for many centuries. Any information that we can gain concerning the state of affairs in Hereford is especially important, since that town was the model upon which most of the towns in the Welsh march, and in Wales itself, were organised.

At the feast of St. Michael we choose a bailiff of our fellow citizens, *by the consent of the whole city*, who is powerful to labour and discreet to judge, holding some tenements or hereditaments in the fee of our lord the king, he to be our head next under the king, whom we ought in all things touching our king or the state of our city to obey, chiefly in three things: *first*, when we are sent for by day or by night to consult of things which appertain to the king or to the state of the city; *secondly*, to answer if we offend in any point contrary to our oath as fellow citizens; *thirdly*, to perform the affairs of the city at our own charges, if so be they may be finished either sooner or better than by any other of our fellow citizens. . . . The bailiff, his year being finished, shall make unto us

They say, 'It should be remarked that the word "*successors*" does not occur at this time (1216) with respect to any municipal corporation: though it does in many grants to and by ecclesiastical corporations; who are contradistinguished from the municipal aggregate bodies of burgesses and others' (Introduction, p. xxi); and later (Introd. p. xxii), 'The first instance of the adoption of the term "*successors*" in a grant to a municipal body occurs in 1227, in a charter to the city of London. . . . It there occurs . . . in conjunction with "*heirs*."' Now there are at least two town charters prior to this time in which burgesses and their successors are mentioned. Probably it would not be difficult to accumulate other instances. 1. Henry II granted the town of Ilchester to his burgesses of Ilchester and their successors, with divers liberties and profits, for 30*l.* a year. (Vide *Report of Munic. Corp. Comm.* part ii. p. 1289.) 2. A charter of 5 Richard I conferred various privileges on the burgesses of Pontefract in these words: *Hac presenti carta mea confirmavi burgensibus meis de Ponte fracto et heredibus et successoribus suis libertatem et liberum burgagium.* (Vide *Historical MSS. Commission, Eighth Rep.* p. 269.)

The reason why no real significance can be attached to a contrast between *heredes* and *successores* is that no rigid or absolute distinction seems to have been present in the minds of the men who issued the grants. In the absence of a sharp distinction no argument based on these terms is valid.

⁶ Rhuddlan and many other neighbouring towns took their form of government from Hereford. See *The Affiliation of Mediæval Boroughs*, by Dr. Charles Gross.

a just account of all his receipts, *in one whole company*, by the tolling of our common bell calling them together for that intent.

Concerning those which would be made free men or enjoy our liberty. *First*, let them come unto our chief bailiff, either by themselves or by their friends, lovingly beseeching and entreating. Then the bailiff shall appoint them a day to come unto the next court, and there to notify unto them the pleasure of the commonalty, especially if the men are strangers. But if they are born in the city and of good report, and if their presence may be profitable to the city for wisdom or other worth known to the citizens, then the bailiff, having called together the steward, and twenty at least of the discreetest and ablest men, especially of the king's fee, shall cause them to come in a public place where our courts are held, having with them the charter.

The candidate for admission then took an oath which bound him to the service of the king, to his fellow citizens, and to the preservation of local laws. An initiation fee was required.

If any man be convicted of perjury he shall lose his freedom altogether, and never recover it again, unless by the special favour of the commonalty, and by the redemption of his goods and chattels for at least twice as much as he gave before. . . . If the heir of any of our citizens shall be willing to enter into our freedom, it shall forthwith be done by him as by the other aforesaid, saving that he shall pay to our bailiff only twelpeence.

The franchise could not have been at all narrowly confined when the son of a citizen by the payment of a poll tax of twelve-pence entered into the town's freedom.⁷ This account is sufficiently definite, and its authenticity has not been questioned. Conjecture has placed the compilation rather later than the date (1154) assigned to it in the manuscript; but for our purpose this does not affect the value of the document. It is plainly stated that 'we choose a bailiff of our fellow citizens by the consent of the whole city,' and from what is said of candidates for the freedom of the city it would appear that any respectable man might become a burgess. Throughout these 'Customs' mention is made of twelve citizens who, in certain cases, act in the town's behalf. This institution will presently be discussed in another connexion.

'Passing from the 'Custom-Book of Hereford,' we come to the interesting question, Were the *nativi*, or villains, eligible for admittance to citizenship? The following passage from Glanvill should decisively settle this point: *Item si quis natus quiete per unum annum et unum diem in aliqua villa privilegiata manserit, ita quod in eorum communam, scilicet gildam, tanquam civis receptus fuerit, eo ipso a villenagio liberabitur.*⁸

⁷ Johnson, *Ancient Customs of the City of Hereford*, p. 10 et seq.; *Journal of the Archaeological Association*, xxvii. 461.

⁸ Glanvill, *De Legibus Angliæ*, lib. v. cap. 5. See also Stubbs, *Select Charters*, 113, 166; Surtees, *Durham*, i. 297. These cases relate to Newcastle, Lincoln, and Sunderland.

During the reign of Henry III it is an ordinary clause in town charters⁹ that 'if any villain shall remain in the borough, and hold himself in the guild or hanse, and in scot and lot, with the burgesses, a year and a day without challenge, he may not again be demanded by his lord, but he may freely continue in the borough. At a time when the merchant guild was the most influential body in the town the *nativus* who 'held himself in the guild or hanse' would naturally be a burgess. Ipswich affords another proof of our view regarding burgess-ship. A landmark in the local history of that town is made by the charter which John granted to the burgesses in the first year of his reign :

By their common council they might choose two of the more lawful and discreet men of their town, well and faithfully to keep the government of the borough, and not to be removed except by the common council so long as they behaved well in that bailiwick.¹⁰

The bailiff's roll of Ipswich, 2 John, describes the first election which was held under the charter. It then proceeds :

Also on the same day it was ordained by the common council of the same town, that hereafter *there shall be twelve capital portmen sworn, in manner as they are in other free boroughs of England*, and that they shall have full power for themselves and the whole town to govern and maintain the aforesaid borough, and all the liberties of the same borough ; and to render the judgments of the town, and also to ordain and do all things in the same borough which ought to be done for the state and honour of the town aforesaid ; and hereupon it is directed by the bailiffs and coroners aforesaid, *that the whole town assemble* in the burial ground on Sunday after the feast of the Apostles Peter and Paul next coming, to elect the aforesaid twelve capital portmen according to the form of the same ordinance.¹¹

The muniments of Ipswich afford one other proof that the terms of citizenship were liberal in this borough so late, certainly, as 1291, when the Ipswich Domesday book was compiled. Wodderspoon, quoting from this work, says—

Every son of a burgess, heir to his father, was ordered to come into court within forty days after the death of his parent, and render up his father's sword, swearing to maintain the franchise of the town and to keep its secrets. If there was more than one son, the eldest brought the sword, *and the others joined in the oath*.

We have already found entrance by heirship at Hereford. The inference is the same in this case as in that. So long as the sons of a burgess were required on oath to maintain the franchise of the

⁹ See, especially for Shrewsbury and Dunwich, *Report of the Municipal Corporations Comm.* of 1835, part iii. p. 2011, and part iv. p. 2219.

¹⁰ *Ib.* part iv. p. 2293.

¹¹ Wodderspoon, *Memorials of the Ancient Town of Ipswich*, p. 78.

town, that franchise could not have passed into the hands of a small and exclusive body.

Another proof which carries weight remains to be cited. A large proportion of the charters¹² declare that burgesses shall elect certain officers 'by their common council.' Now throughout the bailiff's roll of Ipswich, which has just been quoted, *commune concilium* and *tota villata* are made synonymous terms. The common council there, at any rate, was the whole town. So Du Cange defines *commune concilium*: '*incolarum urbis aut oppidi universitas*.' The name itself suggests a large assembly. It is difficult to believe that such a wide expression could in the first instance have been applied to a set of persons closely limited in membership. Another significant point is to be gathered from the general tenor of the charters during this period. No individuals are indicated by them as the sole recipients of the favours granted. Their language is extremely vague, and can only apply, when taken in its most natural sense, to the mass of citizens.

Finally, strong evidence of the early condition of burgess-ship is to be found in the protests which the poorer citizens, even in the thirteenth, but particularly in the fourteenth century, made against the usurpation and oppression of an encroaching oligarchy. They then refer to the rights of free election which their ancestors enjoyed, and which they still claim as their own due. Instances of such claims are by no means rare. The following preamble to a commission issued by Edward III in 1355, though alluding only to a riot, will show how the burgesses insisted on the ancient origin of their electoral privileges:

We have received the plaint of the good men of Beverlay, containing that whereas they and their ancestors, the men and tenants of the town aforesaid, always hitherto, from time whereof memory is not, have had, and been accustomed to have, this liberty, that they may assemble themselves every year on the day of St. Mark the Evangelist at their guildhall of the said town, and elect twelve of the most wealthy and honest men of the same town to maintain and govern the same town, and the laws and customs thereof for the year thence ensuing, &c.¹³

The commission proceeds to state that a body of roughs interrupted the burgesses while they were thus exercising their civic rights.

Placing dependence on the facts which these different sources afford us, we may infer that the government of English towns for above a century after the accession of Henry II, was democratic in principle, and so far as can be ascertained democratic also in

¹² For three such charters granted in a single year—1 John—vide *Report of Municip. Corp. Comm.* 1835, Northampton, part iii. p. 1965; Ipswich, part iv. p. 2293; Shrewsbury, part iii. p. 2011.

¹³ Poulson, *Beverlac*, vol. i. p. 126.

actual working. The mass of citizens at stated intervals freely elected in some public place their own bailiffs, their own officers to keep the pleas of the crown (coroners) and their own mayor, when that title and institution first appear. The sons of a burgess ordinarily received the town franchise. Even villains were freely admitted to a full share of civic rights. The common council of the charters was nothing more or less than the people at large (*'tota villata'*; *'incolarum urbis aut oppidi universitas'*). These are the distinguishing features of an English town in the period which extends from the reign of the first Plantagenet, to the reign of the first Edward. They are emphasised in records of that time, and are confirmed by the protests of a later time, when 'immemorial' liberty was being curtailed by the gradual rise of a close corporation.

English institutions are seldom stationary: a transition of some sort is usually in progress. We have already seen one in the development of the municipality from the feudal borough of Domesday. We now take up another in the change from popular to a more aristocratic government in the towns. First of all what were the chief steps in this transition? In making answer we must notice an aspect of town administration which was of the utmost importance, viz. the presence of a committee or council.

In the 'Custom-Book of Hereford' twelve citizens are mentioned as acting in emergencies for the whole borough.

1. If it shall happen that the bailiff shall be dishonest, proclaimed, suspected, or convicted of any crime, he shall forthwith be put out of his place (that secretly), *twelve* of the company being assembled together, provided that his accounts be rightly made, either by him or by his heirs, at twelve days' warning.

2. If it shall happen that the king or his children come into the city, *twelve* of the discreetest men at the least, being assembled together, shall petition if anything be wanting, and do all other things which belong to the king's state; so that our lord the king or his children have no cause to be aggrieved at the said city.

We are not told who these twelve were, or how they were appointed, but it is clear that they were a committee who for the sake of convenience sometimes represented the town.

Again, at Ipswich, the common council ordained that 'there shall be *twelve capital portmen*, sworn in manner as they are in *other free boroughs of England*.' The election of these capital portmen has already been described. They had full power, for themselves and the whole town, to govern and maintain the aforesaid borough and all the liberties of the same borough; and to render the judgments of the town, and also to ordain and do all things in the same borough which ought to be done for the state and honour of the town aforesaid. The 'good men' of Beverley had the

same custom. Their usage was to assemble annually in the guildhall, and elect 'twelve of the most honest and wealthy men of the same town, to maintain and govern the same town, and the laws and customes thereof, for the year thence ensuing.' The committee of twelve citizens spoken of at Hereford, Ipswich, and Beverley was doubtless a common feature in the management of towns from early in the thirteenth century. 'As they are in other free boroughs of England,' says the bailiff's roll of Ipswich concerning the capital portmen. The institution was widespread, and we have every reason to suppose that the process by which the committee were chosen was identical with that usual in other cases, and explicitly described in the bailiff's roll of Ipswich.

It is exceedingly important that we should insist upon this general prevalence of elected committees. We can easily see how, when municipal relations became numerous and complicated, the administration of the borough passed into the hands of a small executive body. The citizens themselves were always the ultimate source of authority, but, being a monster of many heads, they could only act through agents. To be sure these agents, usually twelve or twenty-four in number, were persons of their own choice and were annually elected. Still, as a matter of fact, the selection was made from that small class of burgesses who, by wealth or personal character, were foremost in the town. Wherever we have definite records we find the same names constantly recurring in the lists of government. This habit of re-electing well-known citizens was undoubtedly convenient, and apathy among the common people tended to confirm it. The gradual strengthening of such a hold on civic office by a few leading men, furnishes the key to the subsequent growth of a close corporation. Co-optation had only to be substituted for free election to transform the old temporary committee, or democratic council, into an oligarchical body.

Though English town development in the main stands apart from the corresponding development in Europe, instructive hints can be gleaned from the progress of the French communes and the Italian cities. In the latter instance especially the effect of artisan life was to stimulate democracy. The nobles were either driven out, or forced to become citizens. An aristocracy of wealth arose, and an oligarchy supplanted the republic. In the absence of a strong central power the oligarchy gave way to a local tyranny, and we have the age of the despots. In England, where the feudal monarchy was strong, and city life much weaker than in Italy, the towns, fortunately, never entered upon the final stage. Still, as in Italy, the people lost free control of their own affairs. An aristocratic *select body* usurped the place of the democratic common council of citizens.

IV. We have now to consider in the remainder of this paper the

manner in which this transition was brought about, and also some early examples of oligarchical control.

Merewether and Stephens say :

The introduction of municipal corporations in the reign of Henry VI, coupled with the partial cessation of the court leet in the reign of Edward IV—and the consequent prevalence of the court baron—laid the foundation of the subsequent usurpations. By the doctrines from time to time applied to the artificial creation of corporations the control of the select body and the capricious election of corporators and non-residents were gradually introduced. Those abuses arose from slight beginnings in the reign of Elizabeth, increased in the reigns of James and Charles I, were carried to the greatest extent by the violent acts perpetrated in the reigns of Charles II and James II, and were finally confirmed in the time of William III and Queen Anne, and have since been acquiesced in by passive submission.¹⁴

The above assertions may at the least be styled incorrect. We have to antedate the reign of Queen Elizabeth by a period of over 200 years in order to get at the time when 'these abuses arose from small beginnings.' We shall see that during the period which, roughly speaking, begins with Edward I and terminates with Richard II, a committee of burgesses often administered public business, to the exclusion of those who had formerly possessed an equal voice in the management of the town. It would be rash to declare that in a majority of the towns the old constitution had been supplanted even at the end of the fourteenth century;¹⁵ but we have enough material to justify the opinion that an oligarchical tendency was at work throughout the reigns of the three Edwards. It is not improbable that further publication of municipal records will add new testimony to what is now available.

The first signs of oppression are revealed by those discords which occurred when a few of the burgesses arbitrarily taxed the rest of the town. This is the cry which the town of Gloucester, in the eighteenth year of Edward I, raised against the exactions of its *potentes*.

The commonalty (*communitas*) of the town of G. complains that the *potentes* of the town have often, within a short time, levied tallages without cause, and prays the king that he will make an investigation concerning the reason of the tallages, and their amount, and where that money went to—by the loss of which they are beggared—and for what uses [it was expended].¹⁶

This instance is only one of many. In the twenty-first year of Edward I a charge was brought against an ex-mayor of Oxford and

¹⁴ Merewether and Stephens, Introduction, pp. lxi and lxii.

¹⁵ *E.g.* Bridport in 13 Richard II. An account is given in the *Report of the Hist. MSS. Comm.* of certain persons being made burgesses. One gives a breakfast 'because he entered by his heirship.' Others paid the respective sums of 20s. and 13s. 4d.

¹⁶ *Rolls of Parliament*, i. 47.

seven of his associates for having levied tallages on the town, contrary to the will of the community. Owen, Culverd, and six others were involved in the complaint. It is stated that when H. Owen was mayor he levied an arbitrary tallage of twenty-five pounds upon the town. He did this 'in accordance with the consent and wish of the said Culverd and the others, who are reciprocally bound to a single plan and purpose by an oath taken among themselves.' Moreover, 'when the rich and powerful (*divites et potentes*) are placed on assizes and juries they levy their expenses on their [the townsmen's] goods, in manifest contempt of the king and to the damage of the said community and its impoverishment.'¹⁷ These protests of Gloucester and Oxford both come within the reign of Edward I, and like protests of other towns become tolerably frequent during the years which follow. Traces of similar abuses can even be found in the last years of Henry III, as at Stamford in 1260,¹⁸ and in a royal commission which bears the date 1269.¹⁹ The latter is styled *De tallagio assidendo*, and is addressed to John le Moynes, one of the king's escheators. It refers to the assessment of an aid in *omnibus civitatibus, burgis, &c.* Provision is made against relief of the rich burgesses at the expense of the poor. The tax is to be so laid *quod divitibus non parcat, nec pauperes indebite graventur*. Unjust taxation of the poor by the rich is, of course, no proof of a close corporation, but it is an important link in the chain of development from democracy to aristocracy. It is the practice against which, almost invariably, the loudest complaints are directed. The more prominent citizens were not inspired by a mere love of office to establish their sway. Office in itself was throughout the middle ages considered a burden, and the inclination everywhere was to shirk it when no palpable benefit was annexed to the discharge of its duties. The few well-to-do persons of the community who aspired to fill public positions were not prompted by any love of fame or glory. They had in mind a far more practical and unworthy end—namely, to manipulate the financial system of the borough in such ways as to promote their own interests by putting burdens on other people's shoulders. The mass of burgesses through indifference suffered their leaders to act very much as they pleased until some attempt at extortion provoked a lawsuit or a riot.

The wealthy did not confine their injustice to the field of municipal taxation. They sometimes tried to crowd out their poor neighbours from commercial rights which they possessed. At Grimsby (2 Edward I) eight burgesses obtained such a monopoly that they would not 'suffer the poor men of G. to participate with them in the matter of purchase and sale according to the liberties granted

¹⁷ Madox, *Firma Burgi*, p. 94.¹⁸ *Ibid.* p. 95.¹⁹ Rymer, *Foedera*, i. 478.

them.’²⁰ At times damages were awarded to the sufferers, as, for example, in the second year of Edward II’s reign, when ‘William Sadeler and others the poor burgesses of Newcastle-upon-Tyne recovered 50*l.* damages in the court of exchequer against Nicholas de Carlile and the rest of the burgesses of the merchant guild of the town.’²¹ On the whole the difficulties were largely economic. The rich were growing richer and the poor poorer, and along with the social change went a political one. The influence of the moneyed men was waxing; that of the needy was waning. Where once all had been equal in power sharp lines of distinction began to appear. The community broke up into classes whose interests were often hostile to each other, and ill feeling was developed by their constant friction. Such a state of things is apparent at Scarborough. In the first year of Edward II a suit was brought in the exchequer court by the middle-class and poor burgesses (*mediocribus et pauperibus*) against the affluent burgesses (*divites*), concerning certain transgressions which had been committed in despite of the former. The sequel of this complaint is not given, but we can infer that it was unfavourable to the middle-class and poor townsmen, for in the reign of Edward III they were practically excluded from the government of the borough. Letters patent then issued provide that ‘bailiffs and all others of the borough, fit for the common offices thereof, be chosen by the oath of certain persons chosen out of the thirty-six, *with the consent of the poor and middle sort.*’²² Evidently the *divites* had secured the initiative for themselves, and at most looked to the populace for ratification of their acts. ‘By the oath of certain persons chosen out of the thirty-six, with the consent of the poor and middle sort,’ has quite a different ring from, ‘it is directed by the bailiffs and coroners aforesaid *that the whole town assemble . . . to elect the aforesaid capital portmen.*’²³

From illustrations of a mere tendency towards oligarchical control we pass to instances of undoubted usurpation. Here it is no longer a question of processes. The rich and powerful have already excluded, or are about to exclude, the poor and weak. By a kind of prescription they are established in office, and thinking themselves secure venture to become intolerant. The resistance which they encounter shows, however, that the spirit of municipal democracy, though dormant, is not extinct. The ‘*Abbreviatio Placitorum*’ contains an important allusion to troubles at Winchester in the second year of Edward I.²⁴ The disturbance was due to wrongs inflicted on the town ‘by the twenty-four citizens.’ Here is the entry:

²⁰ *Hundreds Rolls*, i. 263.

²¹ Madox, *Firma Burgi*, p. 96. See also a document about Scarborough given by Madox in the same connexion.

²² *Report of Municipal Corporations Comm.* 1835, part iii. p. 1713; also Lancaster, pp. 1597–8.

²³ See above, p. 640.

²⁴ *Abbreviatio Placitorum*, p. 187.

Concerning oppressions inflicted by the twenty-four principal citizens, where the customs of the town of W., and the method of electing bailiffs, are treated : to the effect that the twenty-four choose four from themselves each year, out of whom the people (*communitas*) select one ; and the people choose four, out of whom the twenty-four select one, and the same two shall continue bailiffs for that year, and so on.

The distinction which is drawn between the twenty-four principal citizens and the community at large could not be plainer. The select body is still in its infancy, but the committee of twenty-four, however constituted, is striving to assume an important function which was formerly vested in the whole people. We can see, too, that this usurpation must have been a new thing. 'The fact that a cry was raised against what was styled an *oppression*, shows that the inferior burgesses had not forgotten the ancient liberties of their class. The new order justly seemed to them an encroachment. The number of leading burgesses is suggestive. Twenty-four was a common limit to the membership of the select body when it had become a rigid institution in all the towns.

Woodward, in his 'General History of Hampshire,'²⁵ speaks as follows concerning the government of Winchester :

In the beginning of Edward II's reign the bailiffs were elected thus : The twenty-four chose four out of their own number, and out of them the commonalty elected one ; and the commonalty chose four, out of whom the twenty-four chose one : these were the bailiffs for the ensuing year. When the 'Consuetudinarium' was drawn up [early in the reign of Henry VI] the mayor and the twenty-four selected four *prud'hommes*, and the commonalty chose two for bailiffs. These officers were called the two peers of the mayor. The twenty-four, who were also peers of the mayor, are called in the 'Consuetudinarium' *jurez*, and are said to be chosen from *les plus prudes hommes et plus sages* in the city, to aid and counsel the mayor in presenting the franchise. This body appears at a very early date to have attempted to invade the liberties of other members of the municipality, and in the Black Book of Winchester there are signs of some conflict of authorities, in which the twenty-four were eventually successful.

It is stated in the opening of the 'Consuetudinarium'—a codification of customs—that 'these both þe usages of þe city of Wynton þt hayth been usd by our eldrene þe time of our eldrene birth.'²⁶ We observe that some time in the interval between Edward I and Henry VI the commonalty had lost all power of nomination, and were restricted to a choice among those who were presented to them by the twenty-four.

The documents relating to King's Lynn which have been published by the Historical Manuscripts Commission are exceed-

²⁵ Vol. i. p. 276.

²⁶ 6th Rep. of Hist. MSS. Comm. part i. p. 602 ; *English Gilds*, p. 349.

ingly instructive in their bearing on the progress of town government. Probably in no other borough can the course of oligarchical development be so clearly traced. In 1305

letters of pardon and release were issued to burgesses of Lenn in respect to all trespasses, &c., said to have been done by them in assessing divers talliages on the community of the same town, without the unanimous consent of the same community, and in levying the same talliages from the poor and but moderately endowed men of the same community, and other great sums of money under colour of certain common fines, heretofore made by them for divers causes, beyond the sums to which the same fines extended themselves, and in converting to their own use, and not to the advantage of the said community, nor to the reparation of the same town, a great part of the talliages and other different sums of money formerly levied in the same town.²⁷

The Calendar of Charter Rolls under the first year of Edward II gives the following bit of information about Lynn; 'Lynne villa. *Inquisitio de gravaminibus et tallagiis super communitatem villae predictae per majores . . . impositis.*'²⁸ The next step of which we have record was taken in the seventh year of Edward II. Authority was then given, at an assembly in the guildhall, to a committee of twenty-six persons to elect twelve of the more sufficient persons of the borough to be a committee in the matter of the community's business in the king's parliament and elsewhere. This sub-committee 'had warranty under the common seal that their arrangements for the town's business should be adhered to by the community.'²⁹ Before the close of Edward III's reign the burgesses at large were entirely excluded from their right of suffrage in parliamentary elections. 'From 48 Edward III to 17 Richard II there were thirteen elections, and the burgess representatives were in each case chosen by a committee of twelve. Each record gives the names of the electing committee.'³⁰ In the fourteenth year of Henry IV we get an explicit mention of the three classes into which the community was divided—the *potentiores*, the *mediocres*, and the *inferiores*. A memorandum was then inscribed touching certain decrees of Thomas, archbishop of Canterbury and chancellor, upon 'discords and controversies between certain *de potentioribus* of the one part, and the mayor, burgesses, and community of the said town of the other part, respecting certain oppressions and extortions committed by the said *potentiores*.'³¹ The matter was in the end submitted to arbitration:

We the mayor and *potentiores* for our part, and we the *mediocres* and *inferiores* not burgesses for our part, and the whole community of the town of Lenn aforesaid, by these presents promise to fulfil [the decision

²⁷ 11th Rep. of Hist. MSS. Comm. part iii. p. 187.

²⁸ Cal. Rot. Chart. p. 222.

²⁹ 11th Rep. of Hist. MSS. Comm. part iii. p. 146.

³⁰ *Ib.* part iii. p. 158.

³¹ *Ib.* part iii. p. 191 et seq.

of the arbitrators] in all things ; and further for the greater security of the present submission and for the faithful fulfilment of the decrees and ordinances of the said xviii persons, on the part of the *potentiores* xxii have each been bound in the sum of £100 ; also lxxxiv *mediocres* and *inferiores* not being burgesses in the sum of £50 ; and lxvi not being burgesses in the sum of £5 11s. 2d.

The arbitrators did something to redress the wrongs of the *mediocres* and *inferiores*. They disallowed claims which the *potentiores* made to a 'certain sum of 457l. 19s. 7d., which sum, in addition to very many others, had been spent by the mayors from the first to the thirteenth year of Henry IV, without consent of the aforesaid community, unjustly and inordinately, to the serious prejudice and extreme impoverishment of the same community.' They decreed that

yearly each mayor should choose and take to himself three *potentiores*, three *mediocres*, and three *inferiores* not being burgesses of the aforesaid community, which nine persons together with the said mayor should during the year of his mayoralty have power to deal with the rents &c. of the community ; . . . that *inferiores* not being burgesses of the said community who hitherto against order of justice have been deprived of their certain privileges, should enjoy for ever all privileges granted to them by a certain composition made between John, formerly bishop of Norwich, and the mayor and community of Lenn.

This mediation, though fair-seeming, afforded no permanent relief to the *inferiores* and *mediocres*. In the fourth year of Henry V's reign the institution of twenty-four *jurats* was confirmed, and the burgesses were limited to these in their choice of mayor :

When there was a vacancy the mayor and the rest of the *jurats*, in the presence of the rest of the burgesses, elected another of the more worthy, honest, discreet, and sufficient burgesses in the place of him, who, having taken oath, *should continue in that state for life*.

Taken as a whole, Mr. Jeaffreson's report on the Lynn archives leaves little room for doubt as to the existence of a dominant oligarchy in that town, an oligarchy which arose in the fourteenth, and was confirmed in the first years of the fifteenth, century.

Bristol was the scene of a very violent civic outbreak which occurred in 1317. We are fortunate enough to have a detailed account of the disturbances in the 'Vita Edwardi Secundi.' Seyer's 'Memoirs of Bristol' also contains considerable information which is drawn from original sources. The situation is best described in the words of the monk of Malmesbury : ³²

Some time previous a dissension had arisen in the town of Bristol relating to customs of seaport and market, to privileges and other matters,

³² *Chronicles Ed. I and Ed. II*, ed. Stubbs, Rolls Series, ii. 219 *et seq.*

in which fourteen *de majoribus* of that town seemed to have a special right (*praerogativam*). The people (*communitas*) made opposition, affirming that all the burgesses were of a single condition, and therefore remained equal in respect to liberties and privileges. Royal judges were appointed to take cognizance of the disputes.

Forthwith the said fourteen so managed it that outsiders were brought into the inquiry. Moreover, these were considered to have been bribed, and wholly inclined to the side of the fourteen. The people (*communitas*) stated that it would be contrary to the liberties of the town for internal disputes [to be settled] by the decision of outsiders, but the justiciars held such allegations to be idle.

The feeling became intense, and twenty deaths resulted from a tumult in the town hall. For a time

the said fourteen, who strove against the people, leaving their homes and property, departed from the city. For over two years this rebellion of the commonalty of Bristol lasted, yet they were often admonished on the king's part to return to peace.

At last Edward summoned the town to accept the terms which he might impose. The commonalty replied :

We were not the authors of the trouble ; we have in no way been culpable against our lord the king. Certain persons kept striving to take away our rights, and we in turn, as became us, [strove] to defend them. Therefore if our lord the king will relieve us of those things which have been heaped upon us ; if he will grant us life and limb, revenues (*redditus*) and property, we will obey him as our lord and do whatever he wishes ; otherwise we will keep on as we have begun, and will defend, even to death, our liberties and privileges.

The citizens of Bristol hoped that the Scottish war might divert the king's forces from the attack of their town. In this they were disappointed : they were overcome and the fourteen reinstated.³³ Seyer considers this struggle to be the earliest proof of a privileged body among the townspeople. The triumph of the fourteen finds its complete expression in the election of their chief, William Randolph, to the mayoralty just after their reinstatement.

The last citation which we need to make relates to Shrewsbury and its affairs during the reign of Richard II. Here the Black Death had caused many changes, by which the town was disorganised both in government and social life. The crown and the lords of the county at length interfered, and in 1381 twelve persons were appointed to conduct the rule of the borough. The sequel of this act is given in Owen and Blakeway's 'History of Shrewsbury :'³⁴

³³ *Report of Municip. Corp. Comm.* 1835, part ii. p. 1153.

³⁴ Owen and Blakeway, *History of Shrewsbury*, pp. 168-74 ; also *Report of Mun. Corp. Comm.* 1835, part iii. pp. 2011-2012.

The committee of twelve principal burgesses appointed in 1381 for the government of the town was found so conducive to its tranquillity that it was continued until 1389, at which time *the exercise of universal suffrage in the election of bailiffs having, it should seem, been productive of great inconvenience*, a new measure was adopted. The reason alleged for these further alterations is the continuance of the 'discords, debates, and dissensions in the town.'

Finally a composition of the troubles, which was confirmed by Richard II, was effected. 'It recites the long continuance of discords and contention in the town and the consequent evil government, chiefly in that the bailiffs have not been for a long time elected duly, and that the profits and revenues of the town have not been duly levied, or dispended to the benefit of the same.' The bailiffs and the twelve before mentioned were established in office, and authorised to make good remedy for the existing mischiefs. The result of their joint action was the following innovation: No man could be made bailiff who had not 10*l.* a year in land or 100*l.* in merchandise. The bailiffs were to be chosen by twenty-five

of the most lawful commons, being burgesses, resiants, householders, and contributors to all charges in the town. The common seal was by consent of the commons attached to one part of this indenture, to the other part the seals of the bailiffs, of the twelve, and of twelve other of the most valiant [wealthy] and sufficient of the town.

From this time on the twenty-five were the electing body. There are points of marked contrast between such a transition, and the more violent changes which took place at Lynn and Bristol. The commonalty divested themselves for the sake of tranquillity and convenience of their rights of universal suffrage, and placed the election of bailiffs in the hands of the twenty-five who were themselves nominated by the bailiffs of the preceding year. This form of administration remained tolerably stable, as can be seen by reference to the rolls of parliament during the reign of Henry VI.³⁵

The oligarchical spirit gained a great accession of strength during the period of Lancastrian rule and the wars of the Roses. It is during this epoch that democracy in most of the towns becomes nearly extinct and the close corporation confirms and extends the power which it had gained during the fourteenth century. This final stage of development brings us to those narrow 'select bodies' which, after controlling the boroughs of England for more than

³⁵ *Rolls of Parliament*, iv. 476, v. 121. For other cases of an oligarchical tendency see Poulson, *Beverlac*, vol. i. p. 139, and Wells, *Rep. of Munic. Corp. Comm.* 1835, part ii. p. 1366.

three centuries, were abolished by act of parliament in 1835. We must, however, leave the details of this later time unexamined and return for a moment to the rise of the aristocratic impulse and its causes.

The constant increase of population was an important factor in changing the character of town government. Growth in numbers was both cause and effect of growth in commerce. With the growth of commerce came an unequal distribution of wealth, which, ever more and more striking, enabled the rich citizens to gain a greater relative importance than they had possessed before. Their prestige as a class and their personal influence over the poorer burgesses led them to exercise a tacitly admitted sway. Afterwards they would not be slow to claim as a right what they had gained through the indifference or submission of their neighbours.

The representation of boroughs in parliament, the Hundred Years' War, and the Black Death may, or may not, have joined with the apathy of the poor burgesses and the arrogance of the rich, in producing the effect which we have seen. It is not necessary to seek out remote reasons when the whole development is explained by the simple light of experience, by the fact that men are never anxious to surrender what they have once held, and what by long tenure they have come to look on as their own.

In conclusion we have only to review the chief matters at which we have glanced.

I. 'Domesday' shows us few traces of organic municipal life. The burgesses are of different ranks, belong to different lords, and have not yet come to act as a body.

II. Various causes, especially the *folk moot* and *firma burgi*, give the town a status. The citizens hold their tenements by burgage tenure, which is practically the same as free socage. Circumstances force an organisation on the townsmen. Civic officers collect the fee-farm rent and assume charge of internal affairs.

III. Town government under the early Plantagenets (1154-1272) is democratic.

IV. In the later years of Henry III a transition begins. The wealthier class of the community extorts money from the whole town and seems inclined to establish its sway. This tendency assumes definite form in the fourteenth century, during which cycle the poorer citizens in many towns lose the privileges which they had before possessed. The process of change finds its last phase in the establishment of a select body, or close corporation, which, usurping the place of the old democracy, continues to control the town from the later fifteenth century to its legislative death in 1835. In that year the present system of administration was

established, and thereby was brought about an approximate return to the democracy of the twelfth and thirteenth centuries.³⁶

CHARLES W. COLBY.

³⁶ London has been purposely omitted from this sketch, on account of the peculiar and individual conditions of its growth. The student of English municipal history will find much that is instructive in Professor Cosmo Innes's preface to the *Ancient Laws and Customs of the Burghs of Scotland*. Scottish boroughs in the fifteenth century, though opposed to the feudal nobility, were very aristocratic. The merchants had absorbed power and influence, and their guild 'sometimes almost swallowed up the power and management, and even the funds and property, of the burgh.' The artisans of the craft guilds often rebelled against the wealthy merchants, and the elections were very riotous. To provide a remedy against such disturbances an act of parliament passed in 1469 declared that 'the chesing of the new officiaris be in this wise, that is to say, that the aulde consail of the Tounne sall cheise the new consail in sic nowmyr as accordis to the tounne, as Alderman, Baillyis, Dene of Gild, and utheris officiaris, and that ilka craft sall cheise a persone of the samyn craft, that sall have voce in the said electionne of officiaris.' This system remained, in principle, permanent till 1833.

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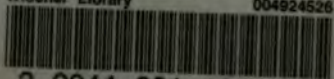
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